

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Bell Telephone Company, d/b/a	:	
SBC Illinois	:	
	:	
and	:	04-0667
	:	
XO Illinois, Inc.	:	
	:	
Joint Petition Regarding Adoption of an	:	
Interconnection Agreement.	:	

PROPOSED ORDER OF XO ILLINOIS, INC.

By the Commission:

I. PROCEDURAL HISTORY

On November 9, 2004, pursuant to 83 Illinois Administrative Code Part 763, XO Illinois, Inc. ("XO") and Illinois Bell Telephone Company, d/b/a SBC Illinois ("SBC") (XO and SBC are referred to collectively as Petitioners) filed with the Illinois Commerce Commission ("Commission") a verified joint petition seeking Commission approval of an amendment to the parties' underlying Interconnection Agreement ("Amendment"), pursuant to Section 252 of the Telecommunications Act of 1996 ("Federal Act") (47 U.S.C. 151, et seq.). An Amended Joint Petition was filed on December 1, 2004.

A statement in support of the petition was filed, along with the sworn verifications of Patricia Fleck, on behalf of SBC and Kristin Shulman, on behalf of XO. On December 1, 2004, Staff filed the Verified Statement of Qin Liu of the Commission's Telecommunications Division.

A duly authorized Administrative Law Judge of the Commission presided over this proceeding. The Petitioners agreed to waive a hearing because there were no unresolved issues in this proceeding.

II. SECTION 252 OF THE TELECOMMUNICATIONS ACT

Section 252(a)(1) of the Federal Act allows parties to enter into negotiated agreements, as well as amendments to those agreements. XO and SBC have negotiated such an amendment to their interconnection agreement and submitted it for approval in this proceeding.

Section 252(e)(1) of the Federal Act provides, in part, that "[a]ny interconnection agreement adopted by negotiation . . . shall be submitted for approval to the State Commission." This Section further provides that a state commission to which such an agreement is submitted "shall approve or reject the agreement, with written findings as

to any deficiencies.” Section 252(e)(2) provides that the state commission may only reject the negotiated agreement if it finds that “the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement” or that “the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.”

Section 252(e)(4) provides that the agreement shall be deemed approved if the state commission fails to act within 90 days after submission by the parties. This provision further states that “[n]o State court shall have jurisdiction to review the action of a state commission in approving or rejecting an agreement under this section.” Section 252(e)(5) provides for preemption by the Federal Communications Commission if a state commission fails to carry out its responsibility and Section 252(e)(6) provides that any party aggrieved by a state commission’s determination on a negotiated agreement may bring an action in the appropriate federal District Court.

Section 252(h) requires a state commission to make a copy of each agreement approved under subsection (3) “available for public inspection and copying within 10 days after the agreement or statement is approved.” Section 252(i) requires a local exchange carrier to “make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.”

III. THE AGREEMENT

The Amendment to the underlying interconnection agreement contains Commission approved language that incorporates various changes in law resulting from the *TRO*, the *USTA II* decision, and the *Status Quo Order*. The Amendment does not modify or extend the Effective Date or Term of the underlying Agreement, but is coterminous with it. Except as modified herein, all other terms and conditions of the underlying Agreement shall remain unchanged and in full force and effect.

IV. STAFF’S POSITION

Under Section 252(e)(2)(A) of the Federal Act, the Commission may reject an agreement, or any portion thereof, adopted by negotiation under Subsection (a) only if it finds that (i) the agreement, or a portion thereof, discriminates against a telecommunications carrier not a party to the agreement; or (ii) the implementation of such an agreement, or a portion thereof, is not consistent with the public interest, convenience and necessity. Staff reviewed the Agreement in the context of the foregoing criteria and determined that it meets those requirements. Accordingly, Staff recommends that the Agreement be approved, subject to Staff’s recommendations regarding implementation, discussed below.

Concerning the implementation of the Amendment, Staff recommends that the Commission require SBC, within five (5) days from the date the Amendment is approved, to modify its tariffs to reference the negotiated agreement for each service.

Staff states that such a requirement is consistent with the Commission's Orders in previous negotiated agreement dockets and allows interested parties access to the agreement. The following sections of SBC ILLINOIS' tariffs should reference the SBC ILLINOIS-XO Agreement: Agreements with Telecommunications Carriers (ICC Tariff No. 16, Section 18).

Staff also recommends that SBC should implement the Agreement by filing a verified statement with the Chief Clerk of the Commission, within five (5) days of approval by the Commission, that the approved Agreement is the same as the Agreement filed in this docket with the verified petition; the Chief Clerk should place the Agreement on the Commission's web site under Interconnection Agreements. The Commission finds that Staff's recommendations regarding implementation of the Agreement are reasonable and should be adopted.

V. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that"

- (1) XO and SBC are telecommunications carriers within the meaning of Section 13-202 of the Universal Telephone Protection Act of 1985, 220 ILCS 5/13-10, et seq. and each is authorized to provide telecommunications services to customers within certain certificated areas of the state of Illinois as defined in Section 13-202 of the Public Utilities Act;
- (2) XO and SBC have amended their underlying interconnection agreement which has been submitted to the Commission for approval under Section 252(e) of the Telecommunications Act of 1996;
- (3) the Commission has jurisdiction of the parties hereto and the subject matter hereof;
- (4) the recitals of fact and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (5) the Amendment to the underlying interconnection agreement between XO and SBC does not discriminate against a telecommunications carrier not a party to the Amendment and is not contrary to the public interest, convenience and necessity;
- (6) in order to assure that the Agreement is in the public interest, SBC shall file a verified statement with the Chief Clerk of the Commission, within five (5) days of approval by the Commission, verifying that the approved Amendment is the same as the Amendment filed with the petition; the Chief Clerk should place the Amendment, on the Commission's website under "Interconnection Agreements;

(7) within five (5) days of the entry of this Order, SBC should modify its tariffs to reference the Amendment in the manner recommended by Staff and described in the prefatory portion of this Order, above;

(8) the Amendment should be approved as hereinafter set forth;

(9) approval of the Amendment shall not establish a binding precedent with respect to any future negotiated agreements or Commission Orders.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Amendment between XO Illinois, Inc. and Illinois Bell Telephone Company, d/b/a SBC Illinois is approved pursuant to Section 252(e) of the Telecommunications Act of 1996.

IT IS FURTHER ORDERED that SBC shall comply with findings (6) and (7) of this Order within five days of the date of this Order.

IT IS FURTHER ORDERED that this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this ____ day of December, 2004.

(SIGNED) EDWARD C. HURLEY

Chairman

CERTIFICATE OF SERVICE

I, Kevin D. Rhoda, do hereby certify that I have, on this 3rd day of December 2004 caused to be served upon the following individuals, by e-mail, a copy of the foregoing Proposed Order of XO in docket 04-0667.

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